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On February 25, 2005

  
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REGISTRATION NO. 31,070

PATENT

01-0506-A-HC

J6723(C)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Customer No. 000201  
Applicant: Pyles  
Serial No.: 10/616,729  
Filed: July 10, 2003  
For: METHOD OF TREATING HAIR WITH HEAT AND A CAP  
WHICH PROVIDES A SIGNAL REGARDING TREATMENT  
Group: 1775  
Examiner: David L. Vanik  
Edgewater, NJ 07020  
February 25, 2005

**RESTRICTION REQUIREMENT**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Sir:

In response to the Restriction Requirement dated January 26, 2005, Applicants elect the prosecution of the Group I claims with traverse. The Group 1 claims (claim 1-11 and 14-21)<sup>1</sup> are directed to a method for treating hair which comprises steps that

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<sup>1</sup> Claim 13, directed to a kit for treating hair was included in both Group I and Group II. Based on the arguments set forth in the Office Action, it is believed that this claim was intended to be included in Group II, but not Group I, and this response is made based upon such a construction of the claim groupings.

include contacting the hair with a hair treatment agent which is activated by heat; covering the hair or a part of the hair with a hair covering which comprises a woven or non-woven fabric impregnated, coated or both impregnated and coated with at least one mutable dye; and applying heat to the hair coverings. In the Group I claims, a color change in the hair covering is an indication that the hair treatment agent has been activated (see claims 1-11 and 14 to 20) or that the hair treatment has been left on the hair a sufficient amount of time (claim 21).

The Group II claims (claims 12 and 13) are directed to a kit for treating hair which comprises components that include a hair covering which comprises a woven or non-woven fabric impregnated, coated or both impregnated and coated with at least one mutable dye and a hair treatment agent. The kit described by claim 12 further comprises written instructions to apply the hair treatment agent to the hair, covering the treated hair with a hair covering, and heating the hair covering until the mutable dye changes color so as to indicate that the hair has been adequately heat treated. In addition to the hair covering and hair treatment components, the kit described by claim 13 further comprises a heat source.

It is respectfully submitted that the Group I and II claims are related in terms of the hair covering and hair treatment features therein described. It is respectfully submitted that prosecuting the claims in a single application would not impose an undue burden on the Examiner in terms of searching, it being further noted that both the Group I and Group II claims have been identified by the Examiner as being classified in the same class, i.e., class 424, subclass 70.1.

With respect to the fabric species, Applicants have been required to elect one of sets (i), (ii) or (iii). Set (i), as described by claim 5, is drawn to woven substrates, nonwoven substrates, hydroentangled substrates, air entangled substrates, natural sponges, synthetic sponges and polymeric netted sponges and mixtures thereof. However, by virtue of the Preliminary Amendment previously submitted, all the independent claims now describe the hair covering as "a hair covering which comprises

a woven or non-woven fabric impregnated, coated or both impregnated and coated with at least one mutable dye". Claim 5 is hereby cancelled, without prejudice, in view of the entry of the Preliminary Amendment<sup>2</sup>.

Sets (ii) and (iii) (as described by claims 6 and 7, respectively) describe subspecies of the materials from which the woven and non-woven fabrics described by the independent claims may be made (for the most part, natural fibers in set (ii), and synthetic materials in set (iii)). It is, therefore, believed that a requirement for an election as between (a) woven and non-woven fabrics and (b) the materials from which they may be made, is improper and should be withdrawn. In a telephone conversation with Examiner Vanik on February 24, 2005, the undersigned requested clarification of the election requirement in view of these observations and understood that election as between sets (ii) and (iii) would be acceptable.

In view of the foregoing, and to comply with the election requirements, Applicants make the following provisional elections:

from the thermotropic mutable dye group of set forth in claim 4, 3,3',3''-tris(p-dimethylaminophenyl) phthalide is elected (claims 2 to 4; 6 to 11; 14 to 18; and 20 to 21 read on same).

from the mutable dye group described in claim 19, 1,3,3-trimethylspiro[indoline-2,3'-(3H)naphtho (2,1-b)(1,4)-oxazine] is elected (claims 2 to 3; 6 to 11; and 14 to 21 read on same); and

from the fabric group, set (iii) is elected (claims 2 to 4, 7 to 11; and 14 to 21 read on same).

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<sup>2</sup> Applicants note that the listing in claim 5 includes materials that may stand in a genus/species relationship. For example, air entangled substrates may be considered a species of a non-woven material, and the pending independent claims are considered to read on same.

It is respectfully submitted that, in the context of the subject invention, the species identified in the pending claims is a reasonable number.<sup>3</sup> Moreover, Applicants do not believe that the search or examination burden is lessened by the restriction requirements being imposed, it being further noted that no such election was required in parent application SN 09/952,061, in which claims having similar species descriptions were presented. Accordingly, the election of species requirement is respectfully traversed.

For the reasons set forth herein, reconsideration of the restriction and election requirements set forth in the Office Action dated January 26, 2005, amendments made hereby is requested.

Lastly, it is noted that claims 7, 17 and 18 of the Preliminary Amendment did not show all amendments that were made to the original claims. To rectify this error, corrected sheets showing the same (corrected pages 4, 6 and 7), are provided with this response.

Respectfully submitted,



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<sup>3</sup> In the context of the mutable dyes, for example, one may use a single dye or a combination of dyes to produce a desired color effect; similarly, in the context of the fabric, the woven or nonwoven fabric may be formed from various fibers or fiber blends, including blends of both the fibers listed in subsets (ii) and (iii), to provide desired fiber properties.